

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of Procedures Governing Amendments)	MB Docket No. 05-210
To the FM Table of Allotments and Changes)	RM-10960
Of Community of License in the Radio Broadcast)	
Services)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. Introduction

The National Association of Broadcasters (“NAB”)¹ submits these comments in response to the Commission’s *Notice of Proposed Rulemaking* in the above-captioned proceeding.² The Commission proposes certain changes to its procedures for making changes to the FM Table of Allotments, and other modifications to broadcast facilities, in order to alleviate and prevent the backlog of pending rulemaking petitions to amend the Table. NAB supports the Commission’s efforts to further streamline its processes.

The Commission must keep in mind one overarching principle as it resolves the *Notice*. Specifically, any new procedures must be applied in furtherance of the goals of Section 307(b) of the Communications Act: “[T]he Commission shall make such distribution of licenses . . . among the several States and communities as to provide a fair, efficient and equitable distribution of service to each of the same.” 47 C.F.R. § 307(b) (1982). This provision has guided the renewal, assignment, and modification of broadcast facilities in local communities for

¹ NAB is a nonprofit incorporated association of radio and television stations and broadcast networks. NAB serves and represents the American broadcasting industry.

² *Notice of Proposed Rulemaking* in MB Docket No. 05-210, RM-10960, FCC 05-120 (*rel.* June 9, 2005) (“*Notice*”).

decades, and regardless of how the *Notice* is ultimately decided, the Commission must take care to preserve the integrity of Section 307(b), as well as its underlying principle of localism.³ In this vein, NAB states below that discouraging speculative petitions to amend the Table by requiring a fee at the time a petition is filed would serve the public interest. We also contend that limiting the number of proposed changes to the Table in uncontested petitions may unintentionally hinder the goals of Section 307(b). Finally, we endorse the Commission's decision to allow electronic filing of petitions concerning broadcast allotments.

II. The Commission Should Deter Non-Bona Fide Applicants by Requiring Payment of a Fee at the Time a Petition to Amend the FM Table of Allotments is Filed

NAB agrees with the Commission that agency resources are not well spent in reviewing and processing petitions for rulemaking to amend the Table of Allotments that are filed by parties who ultimately neither apply for nor bid on the channels they propose.⁴ *Notice* at ¶ 32. Such a waste of the time and effort of Commission staff leads to processing backlogs and also distorts the options and opportunities that otherwise would be available to genuine proponents of channel allotments and authentic auction bidders. *Id.* As one party stated, "Legitimate FM upgrade applications have been way-laid by nuisance filings for first and second service for isolated

³ The *Notice* also implies a partial reliance on spectrum congestion to limit the unwise relocation of radio facilities. *Notice* at ¶ 28. NAB urges the Commission to continue to guard against proposals to amend the Table of Allotments that are inconsistent with existing interference protection standards. *See, e.g.,* Salter Broadcasting Company WFVR, *Memorandum Opinion and Order*, ARN-780908AC, 88 FCC 2d 1197 (1982); Beach Broadcasting Portola Broadcasting Corporation, *Memorandum Opinion and Order*, MM Docket No. 89-503, 8 FCC 2d 3123 (1993)).

⁴ *See* Mass Media Services Application Fee Filing Guide (Sept. 1, 2000), at 14 n.5 and 15 n.11. As noted by commenters on First Broadcasting's Petition, payment of a fee related to amending the Table is not due until an application on FCC Form 301 is filed to implement the Commission's approval of a petition. *See* Comments of Cumulus Licensing LLC, et al., in RM-10960 (May 24, 2004), at 11 n.15.

⁵ *See* Mass Media Services Application Fee Filing Guide (Sept. 1, 2000), at 14 n.5 and 15 n.11. As noted by commenters on First Broadcasting's Petition, payment of a fee related to amending the Table is not due until an application on FCC Form 301 is filed to implement the Commission's approval of a petition. *See* Comments of Cumulus Licensing LLC, et al., in RM-10960 (May 24, 2004), at 11 n.15.

communities well under 1,500 population, which cannot hope to support any commercial attempt at broadcasting.”⁶

NAB thus supports the Commission’s tentative conclusion that discouraging speculative petitions by imposing a “front-end” fee at the time a rulemaking petition is filed would serve the public interest. *Id.* at ¶ 34. Requiring channel allotment proponents and counter-proponents to submit Form 301 for a new construction permit, and its attendant current fee of \$2,980, simultaneously with their rulemaking petition should ease the Commission’s burden. As Cumulus explained, “the Commission’s resources are not put to good use when they are devoted to processing of rule making proposals that are filed not for the purpose of improving service to the public, but purely for speculative or strategic reasons.”⁸ And, as Clear Channel notes, Commission resolution of legitimate allotments proposals is often delayed by the filing of speculative, merit-less counterproposals, which also require no fee.⁹ NAB thus agrees with the Commission that the processing of allotment requests must become more straightforward. NAB also endorses the Commission’s proposal to require that applicants certify their intent, up-front, to participate in the auction for any new channels they propose. Such a requirement would discourage speculation and would have little affect on the processing or awarding of new construction permits. Clearly, any station that is sincerely interested in improving its service by moving to a new FM channel should have no objection to certifying their interest in actually bidding for the channel.

⁶ Comments of John W. Barger in RM-10960 (May 24, 2004), at 1.

⁷ Comments of Clear Channel Communications, Inc. in RM-10960 (May 24, 2004), at 3.

⁸ Comments of Cumulus Licensing, LLC, *et al.* in RM-10960 (May 24, 2005), at 14.

⁹ Comments of Clear Channel Communications, Inc. in RM-10960 (May 24, 2004), at 3.

III. Limiting the Number of Channel Changes Proposed in One Request to Amend the Table May Be Impractical

The Commission finds that its “Columbia, Nebraska Policy,” which prohibits proposals to amend the Table of Allotments involving more than two involuntary channel substitutions, has successfully reduced burdens on Commission staff responsible for processing channel allotment proceedings. *Notice* at ¶ 35. Now, the Commission proposes imposing a similar restriction on uncontested petitions to amend the Table. Under the proposal, the Commission will not process any request for a drop-in channel or other channel modification that involves more than five changes to the Table, even if all the relevant parties have agreed to the changes. *Id.* at ¶ 37.

Although NAB is sympathetic to the burden on Commission staff of reviewing long chains of proposed channel changes, limiting the number of proposed changes in uncontested petitions to five (or any other number) may unintentionally limit significant public interest benefits, including enabling multiple broadcasters to improve service in their current communities, or expand service to reach a larger audience, or perhaps bring a first local transmission service to a new community.¹⁰ For example, as First Broadcasting stated in its rulemaking petition, from time to time a station owner, or even prospective owner, may identify an underperforming station and seek to invest capital, and install new management or upgraded technology, to improve service quality or breadth. Such improvements can lead to enhanced listening quality, or a format change in response to the local community’s needs and interests, or as noted, the first local transmission service in a new community.¹¹

¹⁰ See, e.g., Amendment of Section 73.202(B), Table of Allotments, FM Broadcast Stations (Murrieta, CA), *Report and Order*, MM Docket No. 01-11, 17 FCC Rcd 19458 (2002); Amendment of Section 73.202(B), Table of Allotments, FM Broadcast Stations (Woodbury, GA), *Report and Order*, MM Docket No. 01-201, 17 FCC Rcd 6630 (2002).

¹¹ Petition for Rulemaking of First Broadcasting Investment Partners, LLC, RM-10960 (filed March 5, 2004), at 4; *Public Notice*, “Consumer and Governmental Affairs Bureau – Reference Information Center Petition for Rulemaking Filed,” Report No. 2657 (CGB Apr. 22, 2004).

However, without the ability to move to a new channel or making some other channel change, stations could not bring such benefits to the public. The Commission has approved hundreds of petitions designed to enhance broadcast service to the public, and raising obstacles to similar future requests could artificially hinder broadcast service. The Commission therefore should take a cautious approach in deciding whether to restrict the number of channel changes that may be proposed in one proceeding to amend the Table, or, in the alternative, exempt such petitions from the Commission's rules prohibiting contingent applications.¹² Specifically, if the Commission moves to restrict individual petitions to no more than five proposed changes to the Table of Allotments, then it should allow the filing of up to four contingently related requests, as it does now for applications for minor modifications.¹³ As Cox has explained in support of raising the contingent application ceiling: "Large proposals . . . often result in a concomitant greater number of new local services, thereby achieving a more efficient use of spectrum than could be achieved by a proposal involving a fewer number of changes."¹⁴

IV. Circumstances Now Support the Electronic Filing of Petitions to Amend the Table

In 1998, the Commission enabled parties to file most types of petitions for rulemaking electronically.¹⁵ The Commission wisely predicted that electronic filing would serve the public interest by enhancing interaction with the Commission,¹⁶ as well as reduce regulatory barriers for small businesses, consistent with Section 257 of the Communications Act. 47 U.S.C. § 257.¹⁷

Broadcast allotment proceedings, however, were exempted from the new electronic filing

¹² 47 C.F.R. § 73.3518; *see Notice* at ¶ 28.

¹³ 47 C.F.R. § 73.3518(e). This matter also could turn on whether the Commission ultimately adopts its proposal to allow community of license changes by minor modification applications instead of petitions for rulemaking. *Notice* at ¶¶ 14-29.

¹⁴ Comments of Cox Radio, Inc. in RM-10960 (May 24, 2005), at 3.

¹⁵ *Electronic Filing of Documents in Rulemaking Proceedings, Report and Order* in GC Docket No. 97-113, 13 FCC Rcd 11322 (1998) ("*Electronic Filing R&O*").

¹⁶ *Id.* at 11324.

¹⁷ *Electronic Filing of Documents in Rulemaking Proceedings, Notice of Proposed Rulemaking* in GC Docket No. 97-113, 12 FCC Rcd 5150, 5152 (1997) ("*Electronic Filing NPRM*").

procedures because of the exceedingly large number of such proceedings.¹⁸ In addition, broadcast allotment proceedings are restricted under the Commission's *ex parte* rules (47 C.F.R. § 1.1208), which the Commission believed increased the odds that electronic filing of such petitions and related documents might not be properly served on all relevant parties.¹⁹

At the same time, the Commission promised to monitor and evaluate the efficacy of electronic filing, and reexamine whether its experience with the system over time might support expansion of electronic filing to additional proceedings.²⁰ In the *Notice*, the Commission rightly concludes that the time has come to apply electronic filing to broadcast allotment proceedings. *Notice* at ¶ 39. Currently, 95 percent of all broadcast filings are submitted electronically, and given this experience, the Commission notes that it has created systems that also will enable electronic filings of petitions to amend the Table of Allotments and related documents. *Id.* at ¶ 38).

The Commission now finds that electronic filing will further streamline its resolution of requests to amend the Table, and even improve the accuracy of the Table. *Id.* at ¶ 39. As the Commission reiterated only a few months ago, electronic filing “enhances the ability of the Commission to process applications, protect filing data, and provide direct public access to information in a timely and efficient manner.” *IB Electronic Filing* at 9292. For example, electronic filing eliminates the inevitable delays involved in manual filing, including postal delivery, and manual conversion by Commission staff of filings into electronic form by scanning or other means, which can slow public notice of filed documents. Also, electronic filing enables

¹⁸ *Electronic Filing R&O*, 13 FCC Rct at 11327 n.27.

¹⁹ *Id.*

²⁰ *Id.* at 11322.

²¹ *Mandatory Electronic Filing for International Telecommunications Services and Other International Filings, Report and Order* in IB Docket No. 04-426, 20 FCC Rcd 9292 (2005) (“*IB Electronic Filing R&O*”).

the Commission to redistribute resources away from menial processing and data entry tasks, and towards the reviewing of petitions and creation of responsive documents. *Id.* at 9294.

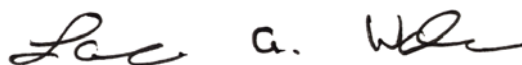
Moreover, the Commission has implemented electronic filing in a variety of contexts no more complex than petitions to amend the Table of Allotments, including applications for space station licenses, satellite and C- and Ku-band earth stations licenses, experimental radio licenses and authorizations, cable operations licenses, and tariffs. *Id.* at 9293 n.5. If the Commission can allow, if not require, electronic filing in these areas, there is no reason not to extend electronic filing to broadcast allotment proceedings. NAB thus supports the Commission's proposal to delete the exemption in Section 1.401(b) of its rules.

V. Conclusion

Again, NAB strongly supports the Commission's efforts to further streamline its processes. As described in the comments above, certain of the proposals offered in the *Notice* will help the Commission more efficiently carry out the mandate of Section 307(b), and use its resources more economically.

Respectfully submitted,

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